

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Proposing rule making related to surface water classification and providing an opportunity for public comment

The Environmental Protection Commission hereby proposes to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 455B.173(2), 455B.176(4) and 455B.176A(7).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 455B.105(3), 455B.173(2) and 455B.176(4).

Purpose and Summary

This proposed amendment revises subrule 61.3(5) to adopt by reference a revised Surface Water Classification document. The revised Surface Water Classification document reflects use designations which have been determined through field work and the completion of a use attainability analysis (UAA).

The federal Clean Water Act establishes a rebuttable presumption that all Iowa streams can achieve the highest level of use, referred to as fishable and swimmable uses. In 2006, the Commission adopted this presumption by rule for all of Iowa’s previously undesignated perennial streams. As an outcome of these efforts, all 26,000 miles of Iowa’s perennial (flowing year-round) streams are initially designated at the highest levels for recreation and warm water aquatic life uses. These stream designations provided initial protection for many miles of perennial streams that were previously not designated for aquatic life or recreational uses.

The concept of assigning all perennial streams the highest use designation if an assessment has not been completed is referred to as the “rebuttable presumption.” Included in the federal regulations are provisions that allow for scientific analysis of these “presumed” recreational and aquatic life uses. This analysis is known as a UAA, which requires the gathering of site-specific field data on stream features and uses. The concept of UAA is being applied by the Department of Natural Resources (Department) as a step-by-step process to gather site-specific field data on stream features and uses. The Department assesses available information to determine if the “presumed” recreational and aquatic life uses are appropriate.

Iowa Code section 455B.176A(8) prohibits the Department from renewing a National Pollutant Discharge Elimination System (NPDES) permit for a facility discharging to a stream subject to a presumed use until the Department conducts a UAA and ensures the stream has the appropriate designation. Prior to issuing an NPDES permit for an affected facility, the Department must complete a UAA for the receiving stream or stream network.

This batch of recommended stream designation changes affects 109 stream segments and 81 facilities. In addition to the designation changes, there are corrections to stream names and legal descriptions in the Surface Water Classification document to correct errors from the previous version. A complete list of the recommended stream designation changes and affected facilities, as well as the updated version of the Surface Water Classification document, can be found on the Department’s water quality standards web page at: www.iowadnr.gov/Environmental-Protection/Water-Quality/Water-Quality-Standards. The full UAA for each stream segment can also be found in the state’s UAA database at the following web page: programs.iowadnr.gov/uaa/search.aspx.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. This rule making will allow for the renewal of NPDES permits for approximately 81 facilities, which may result in a cost of \$10 to \$13 million for facility upgrades at these facilities. These costs have already been accounted for in the 2006 rule making. A copy of the impact statement is available from the Department upon request.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found. A copy of the impact statement is available upon request from the Department.

Waivers

This rule is subject to the waiver provisions of 561—Chapter 10, as adopted by reference at rule 567—13.1(17A), to the extent such waiver is consistent with federal water quality standards requirements. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 22, 2019. Comments should be directed to:

Matthew Dvorak
Water Quality Monitoring and Assessment Section
Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Email: matthew.dvorak@dnr.iowa.gov

Public Hearing

Three public hearings at which persons may present their views orally or in writing will be held as follows:

February 12, 2019 4 p.m.	Urbandale Public Library 3520 86th Street Urbandale, Iowa
February 13, 2019 4 p.m.	Nicola-Stoufer Room Washington Public Library 115 W. Washington Street Washington, Iowa
February 14, 2019 4 p.m.	Harlan Community Library 718 Court Street Harlan, Iowa

Persons who wish to make oral comments at a public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 61.3(5) as follows:

61.3(5) *Surface water classification.* The department hereby incorporates by reference “Surface Water Classification,” effective ~~June 17, 2015~~ [the effective date of this amendment]. This document may be obtained on the department’s website at www.iowadnr.gov.